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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID SMITH,
Plaintiff,
v.
KIESZ, et al.,
Defendants.

No. 11-cv-1918 JAM CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff has requested a seventh extension of time to file his pretrial statement. When the court granted plaintiff a sixth thirty-day extension on December 17, 2014, the court indicated that, absent extraordinary cause, no further extensions of time would be granted. Plaintiff requests another extension of time based upon his contracting an upper respiratory illness around the beginning of the year which resulted in plaintiff making three trips to a physician shortly thereafter. Plaintiff presents evidence indicating he was prescribed cough syrup and an antibiotic on January 8.

Plaintiff fails to indicate what, if any, progress he had made toward completing his pretrial statement before he became sick. Also, plaintiff fails to point to evidence indicating that the illness from which he suffered was so debilitating that he could not reasonably do any work on

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1 his pretrial statement while he was sick.¹ Based upon these facts, the court cannot find that
2 plaintiff has demonstrated extraordinary cause to grant another extension of time.

3 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for an extension of time
4 (ECF No. 98) is denied; and

5 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice under
6 Rule 41(b) of the Federal Rules of Civil Procedure.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
12 objections shall be filed and served within fourteen days after service of the objections. The
13 parties are advised that failure to file objections within the specified time may waive the right to
14 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: January 22, 2015

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18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE

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27 ¹ There is only one defendant remaining in this action and only one claim for a violation of the
28 Eighth Amendment. See ECF No. 73. That being the case, completion of a pretrial statement,
something plaintiff has been aware he must file for the past seven months, is not a task
demanding a lengthy period of time to complete.